

MINUTES  
Texas Real Estate Commission  
May 8, 2000  
Conference Room 235, Texas Real Estate Commission  
Austin, Texas

Chairman Michael Brodie called the regularly scheduled meeting of the Texas Real Estate Commission to order at 9:00 a.m., Monday, May 8, 2000. In addition to Chairman Brodie, members present were Jay Brummett, Ramon Cantu, Lawrence Jokl, Kay Sutton and Maria Gil. Ms. Mayfield and Mr. Austin were absent. Ms. Folmer joined the meeting at 10:40 a.m.

Staff present were: Wayne Thorburn, Administrator; Sabrina Hassumani, Assistant Administrator; Mark Moseley, General Counsel; Mia Nieman, Director of Licensing and Education; Alan Waters, Director of Staff Services; Loretta DeHay, Director of Enforcement; Lyndon Clements, Lead Programmer for Information Services; Christina Kaiser, manager of the Education Section; Michelle Bowens, manager of the Licensing Section; Patricia Holder, Executive Assistant and Deborah Kennedy, Administrative Assistant.

After calling the meeting to order, Chairman Brodie led the attendees in the pledge of allegiance and the Texas pledge of allegiance.

Chairman Brodie moved to agenda item two, minutes of March 27, 2000, Commission meeting. Ms. Sutton, seconded by Mr. Jokl, moved to approve the minutes as submitted. The motion was adopted by unanimous vote.

Mr. Brodie moved to agenda item three, staff reports; committee reports. Ms. Hassumani reported that a meeting had been scheduled between TREC staff, Experior and members of the Texas Real Estate Inspector Committee to discuss the Inspector examinations in response to concerns expressed at the previous Commission meeting. Ms. Hassumani also reported on TREC's Wellness Program and two upcoming training sessions for TREC staff.

Ms. DeHay reported that a search function was being developed to assist users to access disciplinary information published on the web site. In response to a request by Commissioner Folmer, a new report was included in the staff reports which tracks the average time for complaint resolution for the previous thirteen months.

Lyndon Clements, Lead Programmer for Information Services, presented the report for that division. Mr. Clements reported on user activity on the web site and the TREC Fax. Mr. Clements also reported that filing applications for salespersons and brokers online should be available by July 1, 2000.

Ms. Nieman reported on current licensing activity, the review of acceptable real estate related courses by staff, and that a list of approved instructors and course schedules should be available on the web site in the near future. She also reported that 78 instructors had been approved and 26 disapproved.

Mr. Waters reported on the lease specifications being prepared to present to the General Services Commission. There was discussion concerning the cost of moving versus a new lease at the present location. Mr. Waters also reported that a new column had been added to the Real Estate Recovery Fund

Investment Report.

Mr. Thorburn reported on the ARELLO Mid-year meeting in Wilmington, North Carolina. He announced that TREC would be hosting the Southern District Conference in Austin from June 22-24.

The Chairman moved to agenda item four, general comments from visitors. There were no comments from the public.

Chairman Brodie moved to agenda item five, discussion only of pending: (a) repeal or amendments to 22 TAC §§535.91- 535.95, 535.101, 535.111-535.113, 535.121, 535.122, concerning provisions of The Real Estate License Act; (b) amendments to 22 TAC §§537.11, 537.30, 537.31, 537.33, 537.42, 537.46, and repeal of 22 TAC §537.24, concerning standard contract forms; (c) amendment to 22 TAC §535.64, concerning accreditation of schools and approval of courses and instructors. Mr. Moseley presented item five for discussion.

Mr. Brodie moved to agenda item six, discussion and possible action to propose: (a) repeal or amendments to 22 TAC §§535.131-535.133, 535.141, 535.143-535.161, 535.171, 535.181, 535.191 and 535.192, concerning provisions of The Real Estate License Act; (b) amendment to 22 TAC §535.51, concerning general requirements for a license.

Mr. Moseley presented item six (a) for discussion and possible action to propose. After discussion, Mr. Brummett, seconded by Ms. Sutton, proposed the repeal or amendments to 22 TAC §§535.131-535.133, 535.141, 535.143-535.161, 535.171, 535.181, 535.191, concerning provisions of The Real Estate License Act, as presented. The motion was adopted by unanimous vote.

Mr. Moseley presented item six (b) amendment to 22 TAC §535.51, concerning general requirements for a license. After discussion, Ms. Sutton, seconded by Mr. Jokl, moved to propose the amendments to amendment to 22 TAC §535.51, concerning general requirements for a license. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item seven, discussion and possible action to authorize filing notice of intention to review 22 TAC §§535.205-226, concerning provisions of The Real Estate License Act. Mr. Moseley presented item seven for discussion and possible action. After discussion, Mr. Brummett, seconded by Mr. Jokl, moved to authorize filing notice of intention to review 22 TAC §§535.205-226, concerning provisions of The Real Estate License Act. The motion was adopted by unanimous vote.

Mr. Brodie moved to agenda item eight, executive session to discuss pending litigation pursuant to Texas Government Code, § 551.071, and, if necessary, to receive legal advice from general counsel on posted agenda items under Texas Government Code, §551.071(2). The executive session began at 9:47 a.m.

The meeting was called back to order at 10:10 a.m. by Chairman Brodie and announced that there would be a brief recess at 10:12 a.m. The Chairman called the meeting back to order at 10:22 a.m. Mr. Brodie moved to agenda item nine, discussion and possible action to authorize payments from recovery funds.

RF 00-013 Guillermo G. Gutierrez, Rosendo M. Gutierrez and Rosita G. Gutierrez v. Manzor Ali, in the amount of \$16,000 as actual damages and \$3,000 in attorney fees. Mr. Brummett, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

IRF 00-003 Ted and Deanne Harmon v. Wayne R. Williamson, in the amount of \$7,500 as actual damages. Ms. Gil, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

IRF 00-004 Edmund and Esther Crump v. Lance Carton Leslie, in the amount of \$7,500 as actual damages. Mr. Jokl, seconded by Ms. Sutton, moved approval. The motion was adopted by unanimous vote.

IRF 00-005 Janie Ruth Hartgroves v. Royce Don Gaylen and Greg Dean Markwardt, in the amount of \$7,500 as actual damages. Ms. Sutton, seconded by Ms. Gil, moved approval. The motion was adopted by unanimous vote.

Ms. Sutton, seconded by Mr. Brummett, moved to excuse the absences of Ms. Mayfield and Mr. Austin. Mr. Brodie introduced his son, Tony Brodie.

Chairman Brodie moved to agenda item ten, discussion and possible action to authorize the Administrator to contract for internal audit. Mr. Waters presented item ten for discussion. After discussion, Mr. Brummett, seconded by Mr. Jokl, moved to authorize the Administrator to contract for an internal audit. The Chairman announced a recess to allow Mr. Cantu and staff to meet with Mr. Nathaniel Gordon, Jr., for a pre-hearing conference. The meeting was recessed at 10:30 a.m. and called back to order at 10:50 a.m.

Mr. Brodie moved to agenda item eleven, discussion and possible action to approve the Strategic Plan for 2001-2005. Mr. Thorburn presented item eleven for discussion and possible action. Mr. Thorburn referred the Commissioners to subpart "G. Service Delivery Challenges and Opportunities" and asked that they review and approve the suggested language. Ms. Sutton, seconded by Mr. Brummett, moved that number five under Short Term Procedural Changes: Licensing Related Changes be modified to concentrate on the education aspect of pre-licensing and not increasing the difficulty of the license examination. The motion was adopted by unanimous vote.

The Chairman directed the Commissioners to consider Longer Term Modifications to Rules or Statutes. Ms. Folmer asked for discussion concerning number four under Education "Eliminate Mandatory Continuing Education (MCE) Exemption". Comments were offered by Ron Walker, general counsel for the Texas Association of Realtors. Mr. Jokl asked for discussion concerning number five under Education "Establish Optional Competency Testing for Mandatory Continuing Education Credit". After discussion, Mr. Jokl moved to have this item removed from the plan. The motion failed for lack of a second.

Ms. Sutton, seconded by Ms. Folmer, moved to strike number fifteen, "Consider Registration of Homebuilders with Payments into a Recovery Fund". Mr. Brummett spoke against the motion. Comments were offered by Larry Foster, Chairman of the Texas Real Estate Inspector Committee. After discussion, the Chairman called for a vote. Mr. Brummett, Ms. Gil, Mr. Cantu and Mr. Jokl voted against the motion. Ms

Folmer and Ms. Sutton voted for the motion. The motion failed.

Mr. Jokl moved to strike number eleven, "Remove Requirement for Salesperson Sponsoring Broker". Comments were offered by Commissioner Brummett and Ms. DeHay, Director of Enforcement. The motion failed for lack of a second.

Ms. Sutton asked for clarification regarding number twenty, "Create an Expedited Administrative Penalty Process". Mr. Thorburn commented on the current process and explained the changes permitting staff to propose or order penalties, subject to appeal to the membership.

Mr. Jokl, seconded by Ms. Sutton, moved to strike number thirty-three, "Increase the Amount Payable from the Real Estate Inspector Recovery Fund". Comments were offered by Larry Foster, Texas Real Estate Inspector Committee, and Ed Martin, president of the Texas Association of Real Estate Inspectors. Mr. Brummett made a friendly amendment to keep the suggestion but change the wording to:

"TREC proposes that the maximum payments allowed from this recovery fund would be increased from \$7,500 to ~~\$15,000~~ per transaction and from \$15,000 to ~~\$30,000~~ per inspector." and add the words **Consider an** and **in** to the recommendation so that it would read "33. Consider an Increase in the Amount Payable from the Real Estate Inspector Recovery Fund."

Mr. Jokl accepted the friendly amendment. The motion was adopted by unanimous vote.

Mr. Brummett, seconded by Ms. Sutton, moved to approve the Strategic Plan as amended. The motion was adopted by unanimous vote.

Chairman Brodie moved to agenda item twelve, discussion and possible action to adopt resolution commending Jay Brummett. Ms. Folmer moved to accept the resolution commending Jay Brummett for his five years of service as Chairman. The motion was adopted by acclamation. Nanci Hawes, Nanci Hawes School of Real Estate, presented Mr. Brummett with a letter from Kathleen Terrell, president of the Texas Real Estate Teachers Association, thanking Mr. Brummett for his service as Chairman of the Texas Real Estate Commission. Chairman Brodie presented Mr. Brummett with an engraved gavel from the Texas State Senate.

Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for failure to provide information in connection with their license renewals: Clifford Nawin Chambers, Mildred Marcella Colmery, Michael J. Payne, Juan Anthony Guerrero, Marilyn Gail Hutto, Stephanie C. Kehlenbrink, Andria Marisa Lane, Warren Lee McNurlen, William Oliver Molina, Robert Elden Pietzsch, Jr., Cassandra Gregory Puorro, Marie H. Reed, Duaine Alexander Tealer. Ms. Sutton, seconded by Mr. Brodie, moved to authorize investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for failure to complete MCE hours or pay the \$200 fee as required by §535.92(h): Robert G. Cochran and William Edward Oelfke. Mr. Jokl, seconded by Ms. Mayfield, moved to authorize

investigations as requested. The motion was adopted by unanimous vote.

Ms. DeHay requested authorization for the Enforcement Division to proceed with investigations on the following persons for paying a commission to or associating with an unlicensed person in violation of Sections 15(a)(6)(F) and (S) of the Real Estate Act, Article 6573a, Texas Civil Statutes: NRT Texas, Inc. and Susan Dunn Arnold, designated officer.

Mr. Brodie moved to agenda item fourteen, Motion for Rehearing in Hearing No. 00-105-000889, In the Matter of Nathaniel Gordon, Jr. Chairman Brodie announced a recess from 11:48 a.m. until 12 noon. Upon calling the meeting back to order, the Chairman passed the gavel to Mr. Cantu who would preside over the Motion for Rehearing. In response to Mr. Cantu's request Mr. Moseley reviewed the rules pertaining to rehearings.

Mr. Cantu called for the motion for rehearing. Mr. Gordon appeared without counsel; Mr. Brian Clapp appeared for the Enforcement Division. Mr. Gordon presented his motion for rehearing and offered an oral motion for modification. Mr. Clapp presented the Enforcement Division's answer to the motion for rehearing and to the oral motion. After discussion, Mr. Cantu called for a vote on the motion for rehearing. The motion was overruled by unanimous vote. After further discussion, Mr. Cantu called for a vote on the motion for modification. Mr. Cantu re-stated Mr. Gordon's motion for clarity: "By June 8, 2000, Mr. Gordon will pay to the Texas Real Estate Commission \$3000. Starting on July 1, 2000, the remaining amount would be due and payable in 48 equal monthly installments of principal and interest at 10% interest rate. Effective May 8, 2000 the revocation would be probated with all terms as usual and the additional term that all payments be made in a timely manner." Mr. Jokl, Mr. Brummett, Ms. Folmer, Ms. Sutton, Ms. Gil and Mr. Cantu voted in favor of the motion. Chairman Brodie voted against the motion. The motion for modification was approved. It was determined that the Enforcement staff would prepare an appropriate order to be signed on behalf of the Commission by Mr. Cantu.

The Chairman moved to agenda item fifteen, entry of orders in contested cases. There were no orders to enter.

The next regularly scheduled meeting of the Commission is June 22, 2000. The meeting was adjourned at 12:45 p.m.

APPROVED this the 22<sup>th</sup> day of June, A.D., 2000.

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Chairman

ATTEST: \_\_\_\_\_  
Administrator